

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-02-OR-387
Jesse C. Ross and Ernestine A. Ross	)	
Licensee of Station WSAO(AM) and	)	NAL/Acct. No. 200332620013
Owner of Antenna Structure at N34° 36' 56"	)	
W089° 56' 09"	)	FRN: 0008-2084-15
Senatobia, Mississippi	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 17, 2006**

**Released: July 19, 2006**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we dismiss as untimely the Petition for Reconsideration filed by Jesse C. Ross and Ernestine A. Ross, (“Ross”), the licensee of AM radio station WSAO, Senatobia, Mississippi and owner of the antenna structure at North 34° 36' 56" latitude, West 089° 56' 09" longitude. Ross seeks reconsideration of the *Forfeiture Order*<sup>1</sup> in which the Enforcement Bureau (“Bureau”) found it liable for a monetary forfeiture in the amount of twenty-one thousand dollars (\$21,000) for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”)<sup>2</sup> and for willful violation of Sections 11.35(a) and 73.3526(c)(1) of the Rules.<sup>3</sup> The noted violations involve Ross’s failure to register its antenna structure for radio station WSAO, failure to maintain operational Emergency Alert System (“EAS”) equipment, and failure to make available all required public file documents during regular business hours.

**II. BACKGROUND**

2. On November 20, 2002, an agent from the Bureau’s New Orleans Office inspected WSAO. At the time of the inspection, the station’s EAS equipment was not functioning because the encoder/decoder unit was not connected to any operating receivers that would have monitored incoming alert signals and tests. Station personnel were unable to produce any logs of EAS tests sent and received, or any notation that the unit had been removed from service. In addition, the station’s antenna structure, which is 205 feet in height, had no registration number displayed at the base of the structure. The agent found no Commission records that the antenna structure had been registered, and station personnel could provide no evidence of an attempt to register the structure. The licensee later acknowledged to the agent that it owned the antenna structure. Finally, a box of loose papers was presented to the agent as comprising the station’s public inspection file. The box contained only the station’s contour map and licensee renewal information.

<sup>1</sup> *Jesse C. Ross and Ernestine A. Ross*, 19 FCC Rcd 20823 (Enf. Bur. 2004) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. § 17.4(a).

<sup>3</sup> 47 C.F.R. §§ 11.35(a) and 73.3526(c)(1).

3. On March 18, 2003, the New Orleans Office issued a *Notice of Apparent Liability*<sup>4</sup> to Ross for twenty-one thousand dollars (\$21,000) for apparent willful and repeated violation of Section 17.4(a) of the Rules and willful violation of Sections 11.35(a) and 73.3526(c)(1) of the Rules. Ross responded to the *NAL*, seeking reduction or cancellation of the forfeiture because it had corrected or was in the process of correcting the violations identified in the *NAL*. Ross also timely filed the Report required by the *NAL* showing compliance with the Rules. The Bureau's *Forfeiture Order*, which was released and placed on public notice on October 22, 2004,<sup>5</sup> found Ross liable for the proposed forfeiture for willful and/or repeated violations of the subject rules. Ross appeals the *Forfeiture Order*<sup>6</sup> in a pleading received by the Commission on November 23, 2004. In its appeal, Ross argues that the violations were not willful or repeated because 1) it reasonably believed the prior owners of the antenna had registered it, 2) the "Rosses are new minority owners working with [EAS decoder] equipment that broke down," and 3) as of the date of inspection, the files were being cleaned up and refiled, and Ross in fact had all the files except those pertaining to antenna registration from the FAA and the Commission. Ross reiterates that all violations were promptly corrected after the inspection identified them.

### III. DISCUSSION

4. Section 405 of the Act<sup>7</sup> requires that petitions for reconsideration of a Commission action or an action by delegated authority must be filed no later than 30 days after the action that is the subject of the appeal.<sup>8</sup> Once it has made public notice of the action as defined by Section 1.4 of the Rules,<sup>9</sup> the Commission loses jurisdiction to consider an appeal after 30 days have passed.<sup>10</sup> Section 1.106(f) of the Rules, which requires petitions for reconsideration to be filed within 30 days of the date of the public notice of the final order, reflects this statutory mandate.<sup>11</sup>

5. Ross filed its appeal of the *Forfeiture Order* thirty-two days after the public notice date of the *Forfeiture Order*. Because the thirtieth day after public notice of the *Forfeiture Order* was a Sunday, Ross had until the thirty-first day after public notice to file an appeal,<sup>12</sup> *i.e.* until Monday, November 22, 2004. Pursuant to the Act, after November 22, 2005, the Commission had no jurisdiction to consider Ross's late-filed petition for reconsideration. Accordingly, we must dismiss its appeal.<sup>13</sup>

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<sup>4</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332620013 (Enf. Bur., New Orleans Office, released March 18, 2003)(*"NAL"*).

<sup>5</sup> *Daily Digest*, Vol. 23, No. 201, October 22, 2004.

<sup>6</sup> "Appeal of Forfeiture Order," filed November, 23, 2004.

<sup>7</sup> 47 U.S.C. § 405(a).

<sup>8</sup> Documents are considered to be filed on the date of receipt at the location designated by the Commission. 47 C.F.R. § 1.7.

<sup>9</sup> See 47 C.F.R. § 1.4(b), (d).

<sup>10</sup> See *Reuters Ltd. v. FCC*, 781 F. 2d 946, 951 (D.C. Cir. 1986); *National Black Media Coalition v. FCC*, 760 F. 2d 1297, 1299-1300 (D.C. Cir. 1985, Scalia, J.) (FCC has no jurisdiction to consider an appeal after 30 days have passed from date of public notice, distinguishing *Gardner v. FCC*, 530 F. 2d 1086 (D.C. Cir. 1976)).

<sup>11</sup> 47 C.F.R. § 1.106(f).

<sup>12</sup> 47 C.F.R. §1.4(j) provides that, when the calculated filing date falls on a "holiday," the document is due to be filed on the next business day. 47 C.F.R. § 1.4(e)(2) defines the term "holiday" as "Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's offices are closed and not reopened before 5:30 p.m."

<sup>13</sup> See *Washington Broadcast Management Co., Inc.* 15 FCC Rcd 6607 (2000); *Panola Broadcasting Co.*, 68 FCC2d 533 (1978); and *Bay Broadcasting Corporation*, 15 FCC Rcd 23449 (Enf. Bur. 2000); and *Media Broadcasting Corporation*, 19 FCC Rcd 1028 (Enf. Bur. 2004).

**IV. ORDERING CLAUSES**

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405(b) of the Act, and Section 1.106(f) of the Rules,<sup>14</sup> the petition for reconsideration filed by Jesse C. Ross and Ernestine A. Ross, licensee of Station WSAO(AM), in Senatobia, Mississippi, **IS DISMISSED**.

7. Payment of the forfeiture assessed by the *Forfeiture Order* shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>15</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Washington, D.C. 20554.<sup>16</sup>

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Jesse C. Ross and Ernestine A. Ross, Northwest Mississippi Broadcasting Company, P.O. Box 190, Senatobia, Mississippi 38668, and to their counsel Levi Boone, III, Esq., Boone Law Firm, P.A., 401 West Sunflower Road, P.O. Box 1772, Cleveland, Mississippi 38732-1772.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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<sup>14</sup> 47 C.F.R. § 1.106(f).

<sup>15</sup> 47 U.S.C. § 504(a).

<sup>16</sup> See 47 C.F.R. § 1.1914.